

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18219 of 2003

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

PALAS PRABHATSINH MOHANSINH & Ors.

Versus

DISTRICT PRIMARY EDUCATION OFFICER & Ors.

Appearance:

1. Special Civil Application No. 18219 of 2003
MR KB PUJARA for Petitioners
MR RA MISHRA for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2
MR AJ DESAI AGP for Respondent No. 3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date of decision: 01/10/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner [twenty one in number] were the Primary School Teachers appointed under the District Primary Education Committee, Junagadh. The petitioners challenge the orders dated 7th April, 1998 and 22nd April, 1999 made by the State Government in exercise of power of review conferred by section 24 (4) of the Bombay Primary Education Act, 1947 [hereinafter referred to as, "the Act"].

By Circular dated 2nd January, 1990, the State Government decided to fill-in the vacant posts of Primary School Teachers reserved for Scheduled Tribe candidates under the District Primary Education Committees. For this purpose, concession in respect of the required educational qualification was allowed i.e., the candidates who had passed SSC examination were considered eligible for appointment as primary school teacher. In other words, the requirement of Primary Teachers' Certificate was done away with. Pursuant to the said decision, the District Primary Education Committee, Junagadh [hereinafter referred to as, "the Committee"] issued public advertisement on 13th & 15th February, 1990. By the said advertisement, the scheduled tribes persons who had passed SSC examination and who had attained the age of 18 years as on 31st December, 1989 were invited to appear before the interview committee alongwith application in one's own hand and certificates in support of the educational qualification, age, caste, etc. Pursuant to the said recruitment drive, the petitioners and many others were appointed by the Committee as primary school teacher on 12th March, 1991. Upon investigation, it was learnt that the large scale irregularities were committed in the said recruitment drive. Amongst persons selected and appointed pursuant to the aforesaid recruitment drive, were the persons who were not eligible for appointment as per the advertisement dated 13th/15th February, 1990. There were persons who had not applied in answer to the advertisement and had not appeared before the interview committee, etc. Considering such cases, the petitioners and several others whose appointment was found to be irregular were discharged from service by orders dated 12th May, 1993. Feeling aggrieved, such persons [around 250 in number] preferred Special Civil Application No. 3141 of 1993 and other petitions before this Court under Article 226 of the Constitution of India. The said writ petitions were allowed by the judgment and order dated 22nd September, 1993 [Coram : Mr. Justice C.K Thakkar, as he then was]. The Hon'ble Court was pleased to hold

that, "in my opinion, the contention is well founded that the ratio laid down by the Hon'ble Supreme Court in the aforesaid decision would not apply and before terminating the services of the petitioners, an opportunity of hearing is required to be given to the petitioners. However, as observed by me hereinabove, it is not necessary for the respondent authorities to follow the procedure laid down in the Gujarat Panchayats Act or the Rules framed thereunder as also under Article 311 of the Constitution of India. Since it is the case of the respondent authorities that the petitioners could not have been appointed to the post of Primary Teachers but for illegal and fraudulent inclusion of the names of the petitioners in the Select List, it cannot be said that their entry in the public employment was legal and valid. They, therefore, cannot get 'status' as such and the contract can be avoided by following the procedure in accordance with law."

Pursuant to the direction issued by the said judgment, show cause notice was issued upon such teachers on 17th December, 1993. Pursuant to the said show cause notice, by orders dated 12th May, 1994, service of the petitioners and such other teachers was terminated with effect from 30th May, 1994. Feeling aggrieved, the petitioners and the other teachers preferred appeal before the Primary Education Tribunal [hereinafter referred to as "the Education Tribunal"] under sub-section 2 of Section 24 of the Act. The said appeals were dismissed. Feeling aggrieved, the petitioners and the other teachers preferred Special Civil Application No. 12312 of 1994 and other petitions before this Court. The said petitions were allowed by the judgment and order dated 17th January, 1996 [Coram : M.S Parikh, J.]. By the said order, the learned Judge set-aside the order of the Education Tribunal. The appeals were remanded to the Education Tribunal for hearing and decision afresh. The appellants teachers were permitted to appear through advocate. Since the order of remand, by orders dated 17th October, 1996, the Education Tribunal was pleased to allow the appeals. The orders of termination of service were set-aside. The appellants were directed to be reinstated in service with the benefit of continuity in service without the backwages. The said orders dated 17th October, 1996 were taken in review by the State Government in exercise of power conferred by sub-section (4) of Section 24 of the Act. The State Government by order dated 10th June, 1997 set-aside the above referred orders dated 17th October, 1996 made by the Education Tribunal. The said order dated 10th June, 1997 was challenged before this Court in Special Civil Application

No.4635 of 1997 and allied matters. The said group of petitions came to be allowed on 9th October, 1997 [Coram: N.N Mathur, J.]. The order dated 10th June, 1997 made by the State Government was quashed and set-aside and directions were given, inter alia, to the Education Secretary, Government of Gujarat to rehear the entire matter and decide the matter after hearing the learned advocate Mr.P.D Gadhvi. Pursuant to the said directions, the appeals were heard and decided by the Education Secretary afresh. By order dated 7th April, 1998, the above referred orders dated 17th October, 1996 made by the Education Tribunal were set-aside. It appears that the learned advocate Mr. Gadhvi had approached the Hon'ble Chief Minister in the subject matter. After considering the said representation, by order dated 22nd April, 1999, the Director of Primary Education and the Committee were informed that the State Government had decided not to absorb the concerned primary school teachers in service. Feeling aggrieved, the petitioners have preferred the present petition.

Learned advocate Mr. Pujara has submitted that the service of the petitioners came to be terminated on account of alleged irregularities committed by the Interview Committee. No illegality can be attributed to the petitioners. The petitioners not being at fault, their service ought not to have been terminated. He has also submitted that the power of review under sub-section (4) of Section 24 of the Act exercised by the State Government was without the jurisdiction. He has submitted that an appeal shall not lie to the Education Tribunal in the subject matter. The order made in review is, therefore, without the authority of law and cannot be sustained. He has also submitted that the approach of the State Government is perverse. No wrong having been committed by the petitioners, the service of the petitioners ought not to have been terminated. He has sought support from the judgments of this Court in the matter of Mansuri Abedaben Rasidbhai vs. District Primary Education Officer & Anr. [Special Civil Application No. 10113 of 1993 :: Decided on 15th/21st September, 1994 :: Coram-S.D Shah, J.] and in the matter of Manat Khemraj Somaji vs. District Primary Education Officer [Special Civil Application No. 11317 of 2000 & allied matters :: Decided on 27th December, 2000 :: Coram-H.K Rathod, J.]

The petition is contested by learned advocate Mr. Mishra. Mr. Mishra has submitted that the petition deserves to be dismissed on the ground of delay and latches alone. He has submitted that the order made by

the State Government on 7th April, 1998 is challenged in the present petition filed in the month of December, 2003 i.e. after more than five years.

Learned AGP Mr. Desai has contended that the petition deserves to be dismissed on the ground of delay and laches. He has also submitted that the petitioners had preferred appeal before the Education Tribunal under Section 24 (2) of the Act. The petitioners, thus, having submitted to the jurisdiction of the Education Tribunal, they cannot be permitted to challenge the authority of the State Government to take the order of the said Tribunal in review under sub-section (4) of Section 24 of the Act. He has taken me through the reasons why service of the primary school teachers; including the petitioners, was required to be terminated. He has submitted that as against the 469 vacancies reserved for Scheduled Tribes candidates, the Committee pursuant to the advertisement dated 13th & 15th February, 1990 made as many as 760 appointments. Upon preliminary inquiry, it was found that several of the said teachers had not appeared before the interview committee. Their names were entered subsequently by individual member of the interview committee at their sweet will. Many of them were not eligible for appointment even on the relaxed standards. The interview committee had included names of the selected candidates in the merit list clandestinely. Keeping in view the illegality committed in appointment of the primary school teachers, the appointment given to such teachers could not have been sustained. Each individual teacher was given notice to show cause and was also given opportunity of hearing before the Education Tribunal and before the State Government. The said teachers were permitted to appear through the advocate. The said teachers including the petitioners were unable to refute the charge that they were not eligible for appointment or that they had not appeared for interview. The petitioners' appointment being illegal and void ab initio, the action of the State Government in sustaining the orders of termination of their service and in not absorbing such teachers in service is justified and is in the larger interest of the public.

In the matter of Mansuri Abedaben Rasidbhai [Supra], pursuant to the advertisement dated 10th April, 1991 issued by the District Primary Education Committee, Sabarkantha, the writ petitioners had applied for selection and appointment as Primary School Teachers. The writ petitioners were called for interview in the month of February, 1992. They were selected and appointed as Primary School Teachers by orders dated 16th

April, 1992 made by the District Primary Education Officer. In all 442 candidates were appointed. Within months of their appointment, by orders made on 16th February, 1993, service of some 118 such teachers [writ petitioners] was terminated on account of irregularity committed by the selection committee. The said orders were challenged before this Court in Special Civil Application No. 1415 of 1993 and 96 other petitions. By judgment and order dated 5th April, 1993 of this Court [Coram : Mr. Justice C.K Thakkar, J., as he then was], the impugned orders of termination of service were set-aside. The said orders were directed to be treated as show cause notice and the petitioners were directed to file their reply/explanation and to produce evidence; documentary or other material, for consideration by the authority, if desired, and the respondent-authorities were directed to pass appropriate orders in accordance with law. Pursuant to the said direction, fresh orders of termination of service came to be passed on 25th September, 1993 which were the subject matter of challenge in the said group of petitions. It was found that the discrepancies/irregularities were with respect to the additional marks given to some of the petitioners though they were not entitled to such additional marks. The candidates not entitled to relaxation and reservation were appointed as reserved categories such as Scheduled Caste, Scheduled Tribes, Baxi Panch, Physically Handicapped. General category candidates were appointed on the posts reserved for Scheduled Caste/Scheduled Tribes/Baxi Panch/Physically Handicapped. The learned Judge was pleased to consider whether the said writ petitioners or any one of them could be said to be guilty of misrepresentation. It was observed that the writ petitioners had produced certificates and marksheets of examinations that they had passed. It was also observed that, "... wrong allotment of additional marks for passing examination in special subjects do not result into exclusion of meritorious candidates." The Court was of the opinion that the petitioners were not guilty of any irregularity in obtaining employment. The Court, therefore, held that, "...I am of the opinion that since the employment of the present petitioners cannot be said to be vitiated by any fraud, mistake or misrepresentation on their part and since no irregularity in getting employment be attributed to them the respondents cannot be permitted to terminate their services on the ground that their officer has committed irregular in giving employment to the petitioners. These observations are made in the peculiar facts and circumstances of the case because to permit the respondents to terminate these 70 teachers would further give rise to further litigation

inasmuch 244 other teachers who are also irregularly appointed shall have also to be terminated after a period of service of around three years. Therefore, the orders of termination passed against rest of the petitioners are also required to be quashed and set aside and are hereby quashed and set-aside."

In my view, the above observations made by the Hon'ble Court do not lend support to the petitioners herein. As I shall discuss hereafter, if the petitioners had been given undue favour, the petitioners undoubtedly were party to such illegality. Moreover, the peculiar circumstances which existed in the said group of petitions, referred to in the above paragraph do not exist in the present petition.

The petitioners in the matter of Manat Khemraj Somaji and the group of petitions were Scheduled Tribes candidates. They were appointed as Primary School Teachers by the Committee pursuant to the above referred advertisement published on 15th February, 1990. They were given appointment on 28th August, 1990. After their appointment, the petitioners were sent for PTC training. All the petitioners acquired qualification of PTC. More than five years after they joined service and after they undertook PTC training and acquired Certificate, on 9th January, 1996, the said petitioners were given notice to show cause why their service should not be terminated as they did not possess the requisite marks at the SSC examination and that their selection and appointment was bad and illegal. Pursuant to the said show cause notice, the said writ petitioners' service came to be terminated after another five years. The Hon'ble Court observed that as the writ petitioners were not alleged to have obtained employment by fraud and/or malpractice, their service could not have been terminated. The termination of service was held to be punitive. Such orders of termination could not have been made without holding regular inquiry as provided under the Gujarat Panchayat Service [Discipline & Appeal] Rules, 1964. The orders of termination of service were held to be contrary to the basic principles of natural justice and contrary to the relevant provisions of 1964 Rules. Consequently, the said orders were quashed and set-aside. This judgment also shall lend no support to the present petition.

As recorded hereinabove, the order of termination of service of the petitioners came to be made within less than two years of their joining service. The said orders were challenged before this Court in several rounds of litigation and also before the Education Tribunal under

Section 24 of the Act. At no point of time, the petitioners demanded regular disciplinary action though they were before this Court at as many as three different stages. This Court did not consider necessity for such disciplinary action. On the contrary, as recorded hereinabove, Hon'ble Mr. Justice C.K Thakkar [as he then was] in his Lordship's judgment dated 22nd September, 1993 specifically held that, "...it is not necessary for the respondent authorities to follow the procedure laid down in the Gujarat Panchayat Act or the Rules framed thereunder as also under Article 311 of the Constitution of India." The petitioners are, therefore, debarred by principle of res judicata from contending that a disciplinary action as envisaged by the Rules of 1964 was warranted.

On perusal of the records, it transpires that as against the 469 vacant posts for appointment of Scheduled Tribes candidates, the Committee decided to make appointment of 602 Scheduled Tribe Primary School Teachers. As against the said decision, the Committee made as many as 760 appointments of ST Primary School Teachers. It was found that the petitioners and the other candidates had not even appeared for interview nor had they made application in their own hand, as required. The individual members of the Committee had added names of the candidates to the individual selection list drawn by them, after interviews were over. These candidates were not eligible for appointment either because they had not attained the required age or that they had not secured prescribed marks at the SSC examination. The petitioners failed to prove before the Education Tribunal or before the State Government that pursuant to the advertisement they did make application in writing as required and that they did appear before the interview committee for interview. In absence of formal application in writing and in absence of interview by the interview committee, the petitioners could not have secured employment without being active party to the illegality committed by the interview committee. There is no gainsaying that the petitioners secured employment illegally in collusion with or with the connivance of the the interview committee. The Education Tribunal also, by orders dated 17th October, 1996, without considering the rival contentions of the parties to the appeal accepted the contentions raised on behalf of the appellants for asking. Sub-section (4) of Section 24 of the Act expressly empowers the State Government, inter alia, to call for and examine any order made in appeal by the Education Tribunal, for the purpose of satisfying itself as to the correctness or propriety of the punishment

awarded under the said order and to modify, annul or reverse or to pass such order thereon as it deems fit.

As recorded hereinabove, it was the petitioners who approached the Education Tribunal under Section 24 (2) of the Act and submitted to the jurisdiction of the Education Tribunal of their own volition. The petitioners also agreed before this Court [Coram : M.S Parikh, J.] for remand of the appeals to the Education Tribunal. The petitioners, therefore, cannot now be permitted to question the jurisdiction of the Education Tribunal to entertain and decide the appeals preferred by the petitioners and the power of the State Government to take the orders made by the Education Tribunal in review.

The petition also deserves to be dismissed on the grounds of delay, laches and acquiescence. The order made by the State Government as far back as on 7th April, 1998 has been challenged in the present petition preferred nearly after six years.

No other contention is raised before me. In view of the above discussion, the petition is dismissed in limine. Notice is discharged.

{Miss R.M Doshit, J.}

Prakash*